

JUDGE MARSHA J. PECHMAN

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

VLADISLAV BAYDOVSKIY,

Defendant.

NO. CR09-084MJP

DEFENDANT VLADISLAV
BAYDOVSKIY'S SENTENCING
MEMORANDUM

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I. FACTUAL BACKGROUND.

On March 25, 2009, the defendant, Vladislav Baydovskiy, and several co-defendants, were charged by indictment with a variety of offenses, including bank, mail, and wire fraud. Vlad and his wife were arrested in Los Angeles, California, on March 26, 2009, where they were on vacation with their oldest son. Mr. Baydovskiy was ordered detained in Los Angeles, and was transported to this district on April 6, 2009. He has remained in custody, first in Los Angeles, and then at FDC-SeaTac, since his arrest.

On September 25, 2009, Mr. Baydovskiy pled guilty to a two count First Amended Superseding Information. Count 1 charged him with Conspiracy to Commit Bank, Mail, and Wire Fraud in violation of 18 U.S.C. §371, and Count 2 charged him with Willfully Making and Subscribing a False Income Tax Return in violation of 26 U.S.C. §7206(I). Sentencing is scheduled before this Court at 1:30 p.m. on December 18, 2009.

II. MAXIMUM STATUTORY PENALTY.

The maximum statutory penalty on Count 1 (a Class D felony) is a term of imprisonment of five (5) years; a fine of up to \$250,000; a period of supervised release of three (3) years; and a mandatory penalty assessment of \$100. The maximum statutory penalty on Count 2 (a Class E felony) is a term of imprisonment of three (3) years; a fine of up to \$100,000; a period of supervised release of one (1) year; and a mandatory penalty assessment of \$100.

III. OBJECTIONS TO THE PRESENTENCE REPORT.

Mr. Baydovskiy has no objections to the Presentence Report that affect the guidelines calculation.

IV. GUIDELINES OFFENSE LEVEL AND SENTENCING RANGE.

All parties agree that the Total Offense Level is 27, Criminal History Category I. With a Total Offense Level of 27, and Criminal History Category I, the sentencing guidelines range is 70-87 months, before any departures or variances.

V. SENTENCING FACTORS.

In order to uphold the constitutionality of the Sentencing Reform Act, the remedial decision in *United States v. Booker*, 543 U.S. 220 (2005), severed 18 U.S.C. §3553(b)(1) (the provision making application of the guidelines mandatory) from the SRA. Thus, after *Booker*, a sentence within the guidelines range may not be necessary to achieve the Congressionally defined purposes of sentencing. A district court's job is to impose "a sentence *sufficient, but not greater than necessary*, to comply with the purposes" of section 3553(a)(2). The United States Supreme Court has made clear that reasonableness is the *appellate* standard of review in judging whether a district court has accomplished that task. *Rita v. United States*, 551 U.S. 338, 127 S.Ct. 2456, 168 L.Ed.2d 203 (2007). However, the Supreme Court has also rejected the notion that a sentence that amounts to a substantial variance from the Guidelines needs to be justified by extraordinary circumstances, holding instead that appellate courts must review all sentences, both within and without the Guidelines range, under a differential abuse-of-discretion standard. *Gall v. United States*, 552 U.S. 38, 128 S.Ct. 586, 591, 169 L.Ed.2d 445 (2007).

In determining the particular sentence to be imposed, the Court *shall* consider the nature and circumstances of the offense, and the characteristics of the defendant. The Court shall also consider the need for the sentence (1) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(2) to afford adequate deterrence to criminal conduct; (3) to protect the public from further crimes of the defendant; (4) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; and (5) to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar offenses. Of paramount importance to any sentencing determination, however, is that all of these factors are subservient to the §3553(a) mandate to impose a sentence sufficient, but not greater than necessary, to comply with the statutory purposes of sentencing. And as *Rita* makes clear, traditional departure analysis under the guidelines survives post-*Booker*.

Prior to *Booker*, many of these factors were largely ignored, because they were incompatible with the Guidelines. As one Court observed,

For example, under §3553(a)(1) a sentencing court must consider the "history and characteristics of the defendant." But under the guidelines, courts are generally forbidden to consider the defendant's age, U.S.S.G. §5H1.1, his education and vocational skills, §5H1.2, his mental and emotional condition, §5H1.3, his physical condition including alcohol or drug dependence, §5H1.4, his employment record, §5H1.5, his family ties and responsibilities, §5H1.6, his socio-economic status, §5H1.10, his civic and military contributions, §5H1.11, and his lack of guidance as a youth, §5H1.12. The guideline's prohibition of considering these factors cannot be squared with the §3553(a)(1) requirement that the court evaluate the "history and characteristics" of the defendant. The only aspect of a defendant's history that the guidelines permit courts to consider is criminal history.

United States v. Ranum, 353 F.Supp.2d 984 (E.D.Wis. 2005). Following *Booker*, however, courts must once again consider these factors along with the Guidelines and their policy statements.

**VI. SENTENCING RECOMMENDATION AND APPLICATION
OF THE §3553(a) FACTORS TO THIS CASE.**

For the reasons set forth below, we submit that a sentence of thirty-six (36) months on Count 1, and six (6) months on Count 2, to be served concurrently, would be a sufficient--but not greater than necessary--sentence in this case.

A. THE NATURE AND CIRCUMSTANCES OF THE OFFENSE AND THE CHARACTERISTICS OF THE OFFENDER.

1. The Offense.

By any standards, this was a large scale fraud, committed over a period of years. The Court has received voluminous material detailing the offense in connection with the prior sentencings in this case, and no useful purpose would be served by repeating that material here. However, there are differences in the conduct of the various defendants in this case that require further explanation. There are also mitigating factors that bear further discussion.

Much has been made of the fact that certain members of the conspiracy engaged in funding loans through the use of "straw" buyers. In this circumstance, a loan was taken out in the name of someone with good credit, who often had no knowledge that their name and credit were being used at all. For example, Alla Sobol and Camie Byron were involved with a builder in Washougal, Washington. The builder had overbuilt a development, and could not sell the properties. He agreed with Alla and Camie to sell the properties at prices substantially below the listed price. Alla purchased from a third party (Angela Shovutosky [sp?]) the names of people in Russia who apparently had good credit, and processed and obtained loans in their names, at the listed prices. Camie helped process the loans for the listed amounts, and Alla and Camie pocketed the difference between the reduced price and the loan amount. The loans were then allowed to go into

1 foreclosure. The Russian "buyers" had no knowledge that properties had been purchased
 2 in their name. Alla and Camie even maintained a separate bank account at Wells Fargo
 3 to make a few monthly mortgage payments on some of the fictitious loans that they had
 4 obtained using straw buyers. Mr. Baydovskiy was not involved in such loans.¹

5
 6 Mr. Baydovskiy's criminal conduct, on the other hand, consisted mainly of him
 7 misrepresenting his customers' stated incomes and assets on "stated income" loan
 8 applications, and in some instances preparing false verification documents.² With few
 9 exceptions, he did not use straw buyers or wildly inflated appraisals. Instead he falsified
 10 borrower's incomes and assets. Vlad had built up a substantial clientele over the years of
 11 people for whom he had originated loans. These loans involved both the purchase of new
 12 homes, as well as refinancing existing loans. At first, a large percentage of these loans
 13 where completely legitimate, and Mr. Baydovskiy made a reasonable living from that
 14 business, based on the loan origination fees. Unfortunately, in a rising tide of home
 15 prices, it became more and more difficult for his customers to qualify for mortgage loans
 16 based on existing credit requirements, because incomes were not rising at the same pace
 17 as home prices.

18
 19 In order to avoid choking off the credit supply, banks became more imaginative in
 20
 21

22 ¹ Mr. Baydovskiy can recall, participating in, at most, three loans during his entire time
 23 at both Kobay and Nationwide where straw buyers were involved, and only one of those loans
 24 resulted in a loss to the lender. In each such loan in which he was involved, the straw buyer was
 fully aware of, and was a willing participant, in the loan.

25 ² While there was a time that Mr. Baydovskiy was involved in falsifying loan verification
 26 documents, that practice later became unnecessary, as there came a time when the lenders no
 27 longer required any verification of the information provided. Late in the scheme, when the lenders
 28 once again began requiring verification of income and assets, Alla Sobol hired Cecelia Morales as
 a full time employee. Cecelia worked out of David Sobol's office at Emerald City Escrow, and
 her sole job was to create, modify, and falsify loan verification documents. She worked mostly
 on Alla's and Camie's loans. Vlad never used her.

1 funding loans, while at the same time becoming far more lax in their lending standards.
2
3 In their zeal to keep up with a market rapidly spinning out of control, most banks stopped
4 requiring many forms of loan documentation and verification. These "stated income"
5 loans or "no doc" loans, more commonly referred to in the industry as "liar's loans"
6 fueled the ravenous mortgage loan frenzy. The vast majority of fraud committed by Mr.
7 Baydovskiy involved such loans, where the borrower's income and/or assets were falsely
8 inflated in order to qualify for the loan. These loans involved real people who were
9 attempting to enter the booming real estate market for the purchase of a new home or for
10 investment purposes, or who were attempting to refinance existing loans in order to
11 withdraw equity from their existing property, and they were willing participants.
12

13 The lenders not only turned a blind eye to the liar's loans, they actually encouraged
14 them. If a loan packet was submitted with insufficient stated income or assets to support
15 a loan, the lender would often contact the loan originator and advise them that the stated
16 income or assets needed to be "x" in order to approve the loan, and directed the loan
17 originator to resubmit the package with "x", while at the same time assuring the loan
18 originator that the original loan package would be shredded while they awaited to new
19 figures. Other account representatives, armed with coffee, doughnuts and other perks,
20 would routinely descend on Vlad's office to review his loan applications. Based on the
21 size of the requested loan, they would tell Vlad to increase the borrower's income and
22 assets by whatever amount was required to fund the loan. When the account reps were
23 unsure as to the necessary ratios, they would jump on the phone and talk to their
24 underwriters at their home offices, who would quickly run the numbers. Vlad would then
25 increase the numbers on the applications as instructed by the account reps.
26
27
28

1 Even worse, the lenders encouraged the loan officers, through payment of higher
2 commissions and other bonuses, to apply for up the riskiest form of loans. The riskier the
3 loan, the higher interest rate to the bank.
4

5 This, of course, in no way excuses Mr. Baydovskiy's involvement in this fraud.
6 But it does, hopefully, put it in some meaningful context. It should also be noted that
7 many of these stated income loans that were based on applications that included inflated
8 incomes or assets, did not result in losses to anyone. In the end, it was the collapse of the
9 housing market that contributed to the size of the losses, because all of the loans were
10 secured by property, although there is no escaping the fact that the fraud was also a factor.
11

12 **2. History and Characteristics of the Defendant.**

13 Vladislav A. Baydovskiy ("Vlad"), age 31, is currently in custody at FDC-SeaTac
14 awaiting sentencing. He is married and has two children. His wife and co-defendant,
15 Donata Baydovskiy, is also detained at FDC-SeaTac. His oldest son, Brandon
16 Baydovskiy, 3, is being cared for by his parents, Arkidy and Ludmilla Baydovskiy, in
17 Issaquah, Washington, while his second son, Dylan, is temporarily staying with his
18 mother-in-law in Bellevue, Washington.
19

20 **FAMILY BACKGROUND**

21 Vlad is of Russian-Jewish origin. He was born in Gomel on January 10, 1978, in
22 what was then southeastern Byelorussia SSR (Belarus). Belarus, which prior to the
23 Russian Revolution was commonly known as White Russia, was one of the 15 provinces
24 that comprised the old Soviet Union.
25

26 Vlad's father, Arkidy Baydovskiy, grew up on a collective farm near the village
27 of Saratov. In an interview conducted in the preparation for this sentencing, Arkidy
28

1 Baydovskiy recalled:

2
3 I spent most of my childhood in Saratov. Despite his
4 position as village agricultural director, my father was never
5 in the Communist party. It was rare for a Jewish person to
6 gain that rank. He was respected, however. Education was
7 rare in the deep village and my father's years at the
8 Agricultural Academy made a difference.

9 Arkidy Baydovskiy adds:

10 Conditions on the farm were still quite primitive. There
11 were 1200 workers. We raised cows and pigs and chickens.
12 Tractors and basic farm equipment were available but much
13 work was still done by hand. We had a few trucks to bring
14 in supplies. Most personal transportation was on horseback
15 though there were a few Studebakers in the village.

16 We had electric power for only a few hours each morning
17 and night. There were no stores and no asphalt. The radios
18 were battery-operated. The economy had been destroyed
19 during the war and the goal was to build it back up. My
20 parents put tremendous effort into their jobs. They were up
21 at 4:00 A.M. and didn't get into bed till midnight.

22 ...It was a healthy life, at least compared to what my wife
23 and son experienced growing up. The fact that my parents
24 held high positions helped diminish the anti-Jewish
25 sentiment.

26 Vlad's mother Ludmilla (Louda) Finkelstein was born in Gomel in 1948. The
27 Finkelsteins were one of a small number of Jewish families from the Gomel area who
28 survived the Holocaust.³

Louda's family returned to Gomel when she was eleven. Louda recalls:

The devastation from the war was unbelievable. Gomel was
a ruined city. Much of the population, my family included,

³ The Jewish population of Gomel at the beginning of World War II numbered around 15,000. Not long after invading Poland in 1939, the German army overran Belarus. Nearly the entire Jewish population were sent to concentration camps and later executed. Ludmilla Baydovskiy has little knowledge of how her parents escaped the death camps.

lived 10 to 15 to a room. We were three generations all in one small place. There was no kitchen and no bathroom. There were stores but they were empty. Life was day-to-day survival, trying to stay warm and hoping there would be something to eat.

Surprisingly, the schools functioned and were very difficult. I went to School #11 in Gomel and later to the music conservatory where I studied classical piano. Mozart was my favorite though we were naturally required to study the Russian masters.

Louda and Arkidy met in 1962 at School #11. They later became a couple and were married in 1972. After marrying, they lived with Arkidy's parents in a two room apartment in the old part of Gomel. Arkidy worked as a dental technician and Louda taught music to first and second graders.

CHILDHOOD UPBRINGING IN THE SOVIET UNION

1. The Early Years

Vlad spent his early years living with his parents and paternal grandparents in central Gomel. When Vlad was five, his mother developed breast cancer and was hospitalized for a lengthy period. Later, his parents were assigned to a tiny apartment on the outskirts of Gomel, but Vlad continued to live in central Gomel with his grandparents. He recalls that his grandparents were loving, and although he missed his parents, he did not feel neglected. He attended School #27 and showed academic promise. When Vlad was eight, his grandmother broke her hip and Vlad went back to live with his parents. He found life on the edge of Gomel to be quite different from the old city. The Baydovskiys lived in a 300 square foot apartment on the sixth floor of a nine story concrete apartment building that had been built in the 1970's. Most of the local area residents were originally from the countryside, and very few had received more than a perfunctory education.

1 Though Vlad's parents' combined salaries were respectable, income of any amount
2
3 in the form of rubles usually did not cover the necessities of life. For decades after the
4 war, shortages were endemic throughout the U.S.S.R. The problem was particularly bad
5 in Belarus. Manufactured items in the state-controlled economy were in short supply and
6 Vlad recalls his mother and father standing in line for 32 hour stretches in hopes of
7 purchasing shoes. He explained it thusly:

8 If you were able to buy shoes, which was a big "if," you
9 always stocked up. That meant you bought your current size
10 along with a couple of larger sizes. That way you might not
11 need shoes for another three or four years.

12 The quality of Soviet construction left much to be desired. Their building's heating
13 pipes, although almost new, cracked every winter and the residents went without heat,
14 often for months at a time. Winters in Belarus were extremely cold. Vlad's mother
15 describes:

16 We stayed bundled up all the time wearing every layer of
17 clothes we had. The residents would build bonfires in the
18 courtyard in back of the building and huddle together to stay
19 warm. It was crazy. The apartments were so cold that
20 people would go outside to stay warm.

21 Like other Russians who had been through the war, Vlad's parents raised much of
22 their own food in a tiny makeshift greenhouse. They grew cucumbers, cabbage, tomatoes
23 and squash. Every fall Arkidy would rent a truck and drive to the Ukraine, returning with
24 two five foot tall bags of potatoes which Louda would boil and serve with sauerkraut
25 throughout the winter months.

26 2. Schooling

27 Vlad attended School #32 from grades 3 through 10. He reports that compared to
28 American public schools, Soviet schools were phenomenally difficult. Although

1 mathematics and the sciences were stressed, students were also required to begin studying
2 history, geography, Russian literature and politics at an early age. Eighth grade students
3 were already learning calculus. Discipline was rigidly enforced and students were beaten
4 to the ground with sticks for failing to complete homework assignments to the instructor's
5 satisfaction. An attentive student, Vlad had to complete up to five hours of homework on
6 a nightly basis. Louda, although well-intentioned and devoted to her son's welfare, was
7 a harsh disciplinarian when it came to homework. She would stand over Vlad every night
8 as he did his homework. A mistake as slight as smudging his paper would result in blows
9 to his face and ears.
10
11

12 All students were required to have an extra-curricular activity. Vlad was assigned
13 to ballet in which he participated until the age of 14. He was also a member of the Aero-
14 Dynamics Club which carved airplanes and propellers out of wood.
15

16 Students were also required to attend the "Political Class" where Communist Party
17 functionaries instructed the children in how to comply with the principles of Marxist-
18 Leninism. As part of the instruction, children were encouraged to inform on parents who
19 made anti-Soviet remarks. Given the difficult living conditions, it was perhaps inevitable
20 that the struggling Belarussians would criticize the regime. Children who reported such
21 criticism were rewarded with preferential treatment, which included appointment to key
22 positions in the Young Pioneers group which could lead to eventual membership in the
23 party.
24

25 3. Relationship With His Parents

26 Although Vlad's relationship with his parents improved greatly in later years after
27 the family immigrated to the United States, in Belarus it was very difficult. Unlike his
28

1 grandparents who appear to have doted on him and were not overly concerned with his
 2 performance in school, his parents were strict and exacting. Vlad's father Arkidy was a
 3 heavy drinker who would typically not come home until 11:00 p.m. He and Louda argued
 4 regularly and their fights were a household staple. Vlad, who desperately wanted to bond
 5 with his father, recalls lying awake at night waiting for his father to come home from the
 6 bars. On weekends, Arkidy would sometimes beat his son for the smallest of infractions.
 7

8
 9 4. Experience With Anti-Semitism and Social Instability

10 The Baydovskiys were the only Jewish family in their section of Gomel, a fact the
 11 community never let them forget. They would frequently receive scrawled hate-mail in
 12 which the favorite epithet was that "Jews" should "go back to Israel." At times Louda
 13 opened their mailbox only to be confronted by dead rats and other vermin. Vlad was a
 14 particular target due to his youth and vulnerability. Ludmilla Baydovskiy writes in her
 15 appended letter to the Court:
 16

17 [Vlad] suffered moral and physical abuse that was common
 18 for Jewish children. Many times he was [beaten], bullied or
 19 robbed of his lunch money, and forced to go through the day
 20 hungry. Once, in a cold winter day he was found tied to a
 21 phone-pole, undressed and badly [beaten]. He had to spend
 22 three months in a hospital after that. There was no one we
 23 could complain to, since the teachers were abusing him as
 24 well. Once he forgot to put on his red scarf of a young
 25 pioneer. In front of the whole class, the teacher announced
 26 that Vlad has probably stopped wearing the scarf because he
 27 is planning on moving to Israel, and ordered him to go home
 28 and get his scarf without his coat, even though it was winter.

24 The attack which resulted in Vlad's three month hospitalization was perpetrated by
 25 four adults. After stripping and beating him, they tied him to a telephone pole and wrote
 26 foul epithets across his chest. It was dusk and just below freezing at the time of the
 27 attack, and Vlad very possibly would not have survived the night. Fortunately, a neighbor
 28

1 tipped off his mother, who was frantically searching the neighborhood. During his
2 extended hospital stay, Vlad received antibiotic therapy for a severe infection he had
3 sustained. In a separate assault, Vlad was pushed out of a second story window, resulting
4 in a broken arm and finger.
5

6 As the Soviet Union headed toward its dissolution, outlying provinces, including
7 Belarussia, sought their independence. It gained its provisional autonomy in 1988 and its
8 formal independence in 1991. Ironically, in the short term independence only made things
9 worse for the average citizen. Ludmilla writes:
10

11 The 90s period after the collapse of the Soviet Union, were
12 really difficult times. There was hardly any food or clothes
13 in stores, when there was food it was so expensive, we could
14 hardly afford anything. It all reflected on Vlad's health, he
15 lost a lot of weight and developed a life-threatening condition
16 of asthma. For several years he was in a hospital. His
17 doctor recommended getting him out of the country as soon
18 as possible.

19 Due in part to the constant abuse and privation, Vlad developed a serious breathing
20 problem which resulted in frequent trips to the emergency room. The Russian doctors
21 were "stumped" and blamed it on Vlad's asthma or a possible heart problem. Years later,
22 after his family had moved to U.S., Vlad was finally properly diagnosed as suffering from
23 severe panic attacks.

24 RELOCATION TO THE UNITED STATES

25 Vlad was 14 when he and his family arrived in Bellevue, Washington, in June of
26 1992. He was skeletal: close to 5'6", he weighed barely 80 pounds. Vlad recalls his
27 feelings about coming to the United States:
28

I was completely scared. I had never before been on an
airplane and I had been fed anti-American propaganda since
I was six years old. That picture of America that was

1 painted in Russian schools was that the U.S. was mostly a
2 country of hairy, drunken bums sleeping under bridges. One
3 thing I knew was that I had to help my parents. I sensed
4 that they were even more scared than me.

5 Upon arriving in Bellevue, the Baydovskiys moved into a low-income apartment
6 complex. The whole family was disoriented and Arkidy, who had never before been
7 unemployed, was beside himself. He spoke no English and faced the challenge of trying
8 to procure employment as a dental technician. Like many immigrant families, the
9 Baydovskiys refused to consider accepting any form of welfare.

10 Despite his own insecurities and his almost complete lack of English skills, Vlad
11 set about helping his father get a job. For several months, he went job-hunting with his
12 father on bicycles, the two of them scouring Bellevue and surrounding communities. With
13 Vlad doing all of the talking, Arkidy finally secured a dental tech position where he earned
14 \$10 an hour. He had always been a skilled craftsman and was soon able to learn
15 American dental techniques. Meanwhile, Louda found a part-time job in a day-care
16 center.
17

18 Vlad's role in helping his parents to find work and acclimatize reflects the closeness
19 of this family and Vlad's own strong survival instinct. Still deeply affected by his horrific
20 childhood in Belarus, he was almost pathologically shy and had great difficulty meeting
21 anyone's gaze.
22

23 Vlad enrolled at Tillicum Middle School in Bellevue. The transition was eased
24 somewhat by the fact that American public schools were quite easy compared to the Soviet
25 standard. Learning English was the first key obstacle. Vlad recalls:

26
27 I was placed in an ESL class which, while somewhat
28 helpful, didn't solve my problem. My solution was to buy
a Russian-English dictionary. Our assigned reading in the

1 eighth grade was *Tom Sawyer* and *Huckleberry Finn*. To
2 read these books I translated the English words to Russian
3 word-for-word. Every night I spent hours working my way
4 through a few pages. After six months I could speak and
5 read English to some degree and after a year I was
6 reasonably proficient.

7 After helping his father find a job, Vlad went to work himself. His first summer
8 in Washington he picked blueberries for nine hours a day at a local blueberry farm. After
9 that he found a dishwasher/busboy job at an Indian restaurant in Bellevue where he worked
10 five hours a night. He remembers:

11 I wanted to move up to McDonalds. I'm not sure why; it
12 was sort of like it symbolized America to me. I knew I
13 could do the job but they didn't want to hire me because my
14 English still wasn't very good. I kept going back and going
15 back and they eventually gave in and hired me. I stayed all
16 the way through my junior year in high school and worked
17 my way up to floor supervisor and then swing shift manager.
18 If someone didn't show up I was always available and I took
19 on every responsibility that came my way.

20 Vlad's parents recalled waiting fearfully every night for him to return home from
21 work. They eventually rented an apartment closer to the McDonald's during his junior
22 year. Vlad knew that his parents had made the difficult transition to American life for his
23 benefit, and he was anxious to do everything in his power to help them pay their bills and
24 find a real house. He knew, however, that his debilitating shyness stood in his way. He
25 couldn't look others in the eye and would stare at the ground while talking.

26 Over time Vlad developed a conscious plan to improve his social skills. He began
27 to spend any available spare time at the Barnes & Noble bookstore near their apartment,
28 where he would force himself to strike up conversations with other patrons. He explains:

Sometimes I would greet people at the door. I would say
hello and ask them how they were doing. It was terribly
hard at first and several times I ran back to our apartment.

1 But I kept going back to try again... This is how I learned
2 to talk to people. If I saw a person reading a book on golf,
3 I'd try to get them to tell me something about the game. I
4 know it sounds strange but I really wanted to learn to relax
5 around people. My life in Washington was nothing like in
6 Gomel. People were pretty friendly and could care less that
7 I was Jewish.

8 Vlad also read a number of self-help books on how to acquire self-confidence in
9 everyday life situations. He recalls reading a biography which described in detail
10 Abraham Lincoln's early business and political failures prior to going to Washington.
11 Although he was still prone to occasional panic attacks, Vlad slowly began to gain some
12 measure of confidence.

13 On the advice of a cousin, after graduating from Tillicum Middle School, Vlad
14 decided to attend Northwest Yeshiva High School, a Jewish day school in nearby Mercer
15 Island. Given the strict prohibition on practicing the Jewish faith in the Soviet Union,
16 Vlad at first found it awkward and even intimidating to study in a faith-based environment.
17 He transferred back to public school for a semester but then returned to the Yeshiva,
18 where he gradually formed a close bond with the school administrator, Rabbi Fox. Vlad
19 paid his own tuition, first with his McDonald's earnings and later with commissions he
20 earned selling electronic equipment at Circuit City in Bellevue. He graduated from
21 Northwest Yeshiva in 1997 and was accepted by the University of Washington as a
22 Finance and Marketing major.

23 Through careful conservation, Vlad's parents were able to purchase a townhome
24 in Issaquah in 1996. They felt insecure at the thought of carrying a home loan and
25 resolved to pay off their mortgage completely as soon as they were able. In addition to
26 his regular dental tech job, Arkidy started a commercial janitorial service. For the next
27
28

1 four years he, Louda, and Vlad cleaned banks and car dealerships from 7:00 p.m. to
2 midnight in the Lynnwood area. With these earnings, the Baydovskiys were able to pay
3 off their home completely by the end of 2000.
4

5 **EMPLOYMENT AND MARITAL HISTORY**

6 While enrolled at the University of Washington, Vlad lived at home and paid for
7 his books and tuition with commissions he earned selling cell phones at a company called
8 The Future Shop. He did well in his coursework and maintained a B+ average.
9

10 In his sophomore year, Vlad met co-defendant Victor Kobzar who was also a
11 student. The two young men became friends and took a scuba diving class together. They
12 decided to start a business purchasing and refurbishing condominium homes, which they
13 would then resell for a profit. Between 1999 and 2001 they purchased and resold around
14 a dozen condos for small profits.
15

16 In this practical, hands-on manner, Vlad learned the basics of the real estate and
17 loan origination business. He worked at various mortgage companies, first as a loan
18 processor and then as a loan officer. In 2000, Vlad and Victor opened Kobay Financial
19 Corporation in Bellevue. As his workload increased, he had less time for his classes and
20 he withdrew from University of Washington without completing his degree. He immersed
21 himself in real estate and developed a network of hundreds of contacts. Kobay Financial
22 opened satellite offices in Woodland Hills, California and in Scottsdale, Arizona. In 2006,
23 Vlad and Victor Kobzar opened Nationwide Home Lending with Alla Sobol.
24

25 In 2002, Vlad was introduced to his future wife, Donata Brenner, by a friend of
26 his father. Donata, who was born in the former U.S.S.R., had immigrated with her
27 family to Israel as a child.
28

Vlad and Donata were married in Washington in September of 2003. Their first son Brandon was born in 2006 followed by their second child Dylan 18 months later. Despite his own traumatic childhood, Vlad bonded easily with his sons. Albina Gnilyopyat, the proprietor of Rainbow Day Care and Preschool in Bellevue, observes in an appended letter to the Court:

We...know Vladislav as a father of Brandon Baydovskiy, 3 years old boy, who was attending our Rainbow Day Care and Preschool...from January 2008 through March 2009. Based on our opinion as child care providers, Vladislav is a great father, who always was showing huge concern, attention, and love for his child. He would always ask questions about Brandon's day, his feelings, friends, and activities. Brandon showed a big love to his father as well.

Vladislav was...very nice to all other parents in the child care... He would chat with them about their children and how they deal with different aspects of their daily life. ...everybody could see how much Vladislav loved Brandon and how much Brandon loved his dad. It was a really beautiful and heart warming picture to see.

Vladislav was very nice to all the teachers in our child care center... He would always say how thankful he was for all our care, attention and teaching...and how much he appreciated our hard work...

In any conversation with Vlad, his love for his children is palpable. He misses them intensely and lives in anticipation of their weekend visits at the FDC. He now fully understands that family is far more important than any material gain and he has pledged to never again do anything that might jeopardize his ability to be home with his children.

CIRCUMSTANCES RELATED TO THE OFFENSE

At the time of his offense conduct, Vlad had worked his way up from being a neophyte in the loan business to a top-producing loan officer in a relatively short period of time. The same terrified boy who had immigrated to the United States in 1992, had

1 through hard work, self-improvement and persistence, chalked up a series of impressive
2 accomplishments in a relatively short period of time.
3

4 Based on the nature of his offense, it would be easy to cast a skeptical eye on all
5 of Vlad's achievements and conclude that all of his success was due to fraud. The fact is,
6 however, that based on his intelligence and his tremendous work ethic and drive, Vlad
7 initially achieved success without bending the law. Unfortunately, he, like thousands of
8 other loan officers across the country, became caught up in an increasingly flawed system.
9 To his downfall, Vlad applied the same energy and desire to succeed that had worked so
10 well for him in the past to the ever escalating fraud scheme.
11

12 To understand the loan environment in which Vlad worked, and which led to his
13 downfall, it is helpful to take a "bird's eye" view of the mortgage industry between 1999
14 and the economic collapse of 2008. As home prices steadily rose, increasing numbers of
15 potential homebuyers found themselves unable to afford traditional 30 year fixed interest
16 loans based on traditional lending standards, which required full disclosure of a potential
17 buyer's financial state. In order to open up substantial new markets for home loans and
18 home equity loans, banks and investment banks including Lehman Bros., Washington
19 Mutual, Countrywide, Wachovia, and IndyMac, among others, created various high-risk,
20 "easy access" mortgage instruments. Among these were the now notorious "sub-prime"
21 loans, various "low doc" and "no doc" loan instruments (also known as "stated income"
22 loans), a dizzying array of Adjustable Rate Mortgages (ARM's) and the Interest Only
23 Loan. Perhaps the most notorious of all the "high-risk" bait being dangled by the policy
24 makers at the banks and investment banks was the Negative Amortization Loan, in which
25 the purchaser paid only a small percentage of his or her interest rate as part of his monthly
26
27
28

1 payment which resulted in the owner's equity decreasing inexorably on a monthly basis
2 while the lender's stake in the property increased artificially.
3

4 The above lending institutions, most or all of which are now defunct, pushed these
5 new loans hard by structuring in various incentives for their managers, account
6 representatives and underwriters. In effect, nearly everyone involved in closing one of the
7 new exotic loan packages earned a higher commission than he or she would have made on
8 a traditional 30 year fixed-rate mortgage. As time passed, the above practices trickled
9 down and numerous smaller lenders began offering similar high-risk loan packages as well.
10

11 The banks weren't concerned with risk--only profit--because they knew they were
12 going to sell the loan to someone else, usually within days of funding the loan. See, *e.g.*,
13 Drew Silver, *Part One: Reckless Strategies Doomed WaMu*, and David Heath, *Part Two:*
14 *Hometown Bank Turned Predatory*, Seattle Times, October 25 and 26, 2009, attached
15 hereto as Exhibit A-1 and A-2.
16

17 ACCEPTANCE OF RESPONSIBILITY

18 Vlad fully recognizes that the lenders' collusion, while integral to the success of
19 the fraud, in no way justifies his participation in the fraud scheme. That is why he did
20 not put the government to its proof, and why he chose to plead guilty. He is also aware
21 of the illegality of failing to declare his wife Donata's true income on their 2006 tax
22 return, and he regrets this criminal conduct as well.
23

24 In many hours of discussion with Vlad, one is struck by the depth and sincerity of
25 his contrition. There is no question that he genuinely regrets having broken the law. He
26 is forthright in admitting that his obsession with luxury items and "creature comforts"
27 during this period was misguided and shallow. In the nine months since his arrest, he has
28

1 done a great deal of soul-searching and he realizes that his family and their real welfare,
2 which is measured in time spent with children and commitment to their activities, is far
3 more important than the material acquisition he formerly sought. This is perhaps best
4 illustrated in a letter Vlad wrote to the undersigned counsel prior to his guilty plea in this
5 case. The letter was written after Vlad had given his proffer, but before we had
6 negotiated a plea agreement, and touched on many things that were on his mind at the
7 time. The letter included the following passage:
8

9
10 Rich, I know that you will do everything possible to get a
11 best outcome from this case for me, but I am scared. And
12 I'm scared because it is so hard being here, mentally and
13 emotionally. Maybe for some people its no big deal, but for
14 me it is a torture every single day! Its a torture because I
15 still can't come to the realization that I was such a freaking
16 idiot, that I gave up the most precious things in life, like
17 being with my kids and seeing them grow up, and being with
18 my family and I traded that for what? For stupid money
19 which has become meaningless for me! Why? I ask myself
20 that question a million times a day -- its a mental torture. I
21 gave up everything so I can have money -- but its not where
22 happiness is. If I could do it all over again I would never
23 ever ever do what I did -- I would be more happy and
24 satisfied working at McDonalds for \$10 an hour, but being
25 with my family. The problem was, I did not understand that
26 at that time. I just want one more chance to make my life
27 right, and have my priorities straight. I know 100% that this
28 is my first and last time being faced with any kind of
criminal prosecution. I will never never give up my family,
my sons, my freedom for any amount of money. Nothing is
worth this -- Nothing!

Rich, I'm sorry to go into things in this letter that you
probably do not care about, but I have nobody else to tell it
to, and its all bottled up inside me.

It is clear from this letter that Vlad now has a much better appreciation for what
really matters in life, and it is unlikely that he will ever again appear in front of another
court in similar circumstances.

1 Similarly, his mother Ludmilla recounts in her letter:

2
3 First time Vlad call me from prison, he was crying and
4 asking our forgiveness for all the pain he is causing us. On
5 that day he promised to only tell the truth from now on. He
6 keeps asking our forgiveness in every letter and visiting and
7 telling that he can not forgive himself for the mistakes he
8 made. He now understands that happiness is not in money,
9 cars or houses, but with his family, his children. This was
10 the first and last mistake that he made in his life, and no
11 amount on money will ever get him to do anything wrong
12 again.

13 I believe him. As a mother, I can feel when he is telling the
14 truth, and he speaks straight from the heart.

15 Your Honor, I am begging you to believe me that Vlad's
16 remorse is sincere.... We are caring for two small children
17 (ages 2 and 4) and both our elderly fathers (ages 82 and 87).
18 Vlad is our only son and the only one we can rely on for any
19 kind of support. We don't know how to survive without
20 him.

21 It would not be hyperbole to describe Vlad as a "fish out of water" in the SeaTac
22 detention center. He spends his time alone reading, and has established few friendships
23 with any of the other inmates. He phones his parents twice a day and lives in anticipation
24 of their weekly visits when he spends time with his sons. He lives for that day when he
25 will be able to return home and start all over again from an honest foundation, even if it
26 means working at menial jobs.

27 **EMOTIONAL AND PHYSICAL CONDITION**

28 As a child in Belarus, Vlad Baydovski was prone to severe panic attacks in which
he was unable to breathe. These attacks required frequent hospitalizations and were
misdiagnosed as either asthma or a mysterious heart ailment. Once he relocated to
America, these attacks diminished in frequency and for a time stopped entirely. With the
mounting stress of his career as a loan officer, the attacks returned and were accompanied

1 by mounting depression.

2
3 In 2001, Vlad vacationed with his parents in the Dominican Republic. There he
4 suffered nightly panic attacks and felt as though he could not breathe. After returning to
5 the U.S., the attacks subsided but were replaced by ongoing depression. He sought
6 medical help and was prescribed Zoloft for the next several years.

7 Vlad's marriage to Donata in 2003 helped him achieve some stability, but over time
8 the panic attacks returned. His condition was finally diagnosed in 2007. In moments of
9 panic, his airwaves would spasm which triggered his inability to breathe. He was
10 prescribed Xanax for anxiety at the Redmond Mental Health Center in Redmond,
11 Washington (see PSI, Pgs. 18-19, ¶¶81-82). Although the Xanax helped with the panic
12 and anxiety, Vlad soon began mixing it with large amounts of vodka, which resulted in
13 intoxication and a resulting sense of numbness. He also abused pain-killers for a period
14 of time in an effort to occlude his mounting sense of despair. Vlad continued to abuse
15 Xanax and alcohol up until his arrest in March of this year.

16
17
18 Vlad is now sober and in touch with his feelings. He knows now that fancy homes
19 and luxury automobiles certainly did not (and will not) translate into happiness and --
20 although he was obviously very close to his children -- regrets that he did not spend even
21 more time with them in the period prior to his arrest. Vlad is also aware that he still must
22 find a way to deal fully with the residue of emotional problems that plague him from the
23 years of abuse he suffered as a child in Belarus. He believes he would profit from
24 psychotherapeutic and rehabilitative counseling during his time in custody.

25 26 LETTERS OF SUPPORT

27 About a half dozen character letters have been submitted in support of Vlad by his
28

1 friends, family and others who know him. These letters depict his closeness to his wife,
2 children and parents, and above all, his remorse for the acts that have led to his present
3 situation. The letters are appended, and some are excerpted below.
4

5 Family friend Innessa Gurevich writes:

6 I am writing on behalf of my nephew, Vladislav. I have
7 known him since he was born... I know that he is a devoted
8 family man with two children that need him. If he is
9 incarcerated for a long period of time, I am sure that his
10 children will be affected negatively... Vladislav is a kind
11 and gentle soul who has worked hard for everything he has
12 for as long as I can remember. I know that his biggest fear
13 right now is not being there for his two sons and wife due to
14 the mistakes he has made. I am sure that if he is given the
15 opportunity to come home to his family, he would not make
16 the same mistakes again and would do nothing more than
17 work hard to provide for his wife and kids.
18

19 Vlad's cousin Yury Gurevich states in his letter:

20 Vladislav is a wonderful human being with a kind and
21 charitable heart and it would be a large loss for my family
22 and I not having him around for a long period of time. I
23 also fear of the negative effect that his incarceration would
24 have on his two young sons and his lovely wife. His
25 children need their father so that they can grow up with a
26 positive and strong male role model.
27

28 I truly believe after communicating with him...that he is
truly regretful of his mistakes and would give anything to
take them back.

Albina Gnilopyat adds:

If Vladislav be sentenced, Brandon would really have a big
loss. Little boy would lose that special warmth and love,
which only father can give to his child... Our opinion is that
Vladislav Baydovskiy is one of the best fathers and persons
we have known through our long experience, since year of
1999, working as child care providers and communicating
with many different parents. We strongly believe that
Vladislav has learned from his mistake and case calls for
compassion in sentencing.

1 Family friend Ludmila Perminova writes to the Court:

2 All this twelve years we have very close relationship and
3 Vladislav dear for my, like son, because he grew up on my
4 eyes. He is kind, honest and sympathetic young man.
5 When I asked him any kind of help he always did it for
6 my...

7 Vladislav is very loyal son. I saw his relationship with
8 parents with love and tenderness. He always try to help
9 them. I felt very happy, that my friends have very
10 sympathetic son. He is very good husband and loving
11 father. If Vladislav be sentenced, his parents will be loss
12 support, because his mother is sick, and they are caring for
13 two small children and two elderly fathers.

14 Vladislav mother often read his letters and we are crying
15 together. He ask forgiveness from parents and promise that
16 it never happen again and he always will be lives honestly
17 and he never will make those mistakes in his life again.

18 Your Honor, I know Vladislav very good and believe that
19 his remorse is sincere.

20 **3. Cooperation.**

21 Pursuant to the Plea Agreement, Mr. Baydovskiy, like his co-defendants,
22 cooperated not only in the government's investigation of this case, but also in the
23 government's investigation of other individuals and entities involved in similar conduct.
24 Although the Plea Agreement contemplates that there will be no motion for a downward
25 departure pursuant to U.S.S.G. §5K1.1, the Court can, and should, consider Mr.
26 Baydovskiy's cooperation under the 3553(a) factors.

27 During the sentencing of co-defendant Alla Sobol, both Ms. Sobol's counsel and
28 government counsel stressed the importance of the timing of Ms. Sobol's cooperation, and
this was clearly something that the Court took into consideration in fashioning Ms. Sobol's
sentence. Vlad also offered to cooperate very early in this case. In fact, immediately

1 following his arrest in Los Angeles, he communicated his desire to cooperate to his
2 appointed counsel, who notified the U.S. Attorneys Office in Los Angeles. Unfortunately,
3 Vlad was told that there was no one in Los Angeles he could speak to about the case, and
4 that any cooperation on his part would have to wait until he was transported to Seattle.
5

6 When Vlad arrived in Seattle he told his appointed counsel (Peter Mazzone) that
7 he wanted to cooperate and Mr. Mazzone so informed the government. Mr. Mazzone,
8 however, felt--quite properly--that he needed to educate himself about the case before he
9 would subject his client to a proffer. The proffer was finally scheduled in late May, but
10 due to a substitution of counsel, the proffer was postponed. As soon as the undersigned
11 counsel made his appearance, the government was notified that it was still Mr.
12 Baydovskiy's intent to cooperate, but that some additional time would be needed for me
13 to familiarize myself with the case. Thus, the delays in scheduling Mr. Baydovskiy's
14 proffer were not of his making. Had it been up to him, he would have proffered within
15 days of his arrest.
16
17

18 It is also important to note that Mr. Baydovskiy was far more candid during his
19 proffer than were Ms. Byron and Ms. Sobol. Indeed, the case agents complimented him
20 on his candor following his proffer. On the other hand, we are informed and believe that
21 both Ms. Byron and Ms. Sobol initially greatly minimized their own involvement in the
22 conspiracy, and that it took many proffer sessions from each before the government felt
23 that it had obtained a more accurate picture of the true scope of their involvement.
24 Moreover, according to law enforcement reports provided to the defendant, Ms. Byron
25 initially completely denied any knowledge of, or involvement in, any fraud. Similarly,
26 Ms. Sobel's initial proffer contained many statements that were later determined to be
27
28

1 inaccurate or untruthful.

2
3 **B. THE SERIOUSNESS OF THE OFFENSE; PROMOTING RESPECT FOR THE LAW;
AND JUST PUNISHMENT.**

4 To be sure, the offense to which Mr. Baydovskiy has pled guilty is a serious
5 offense. However, any sentence significantly beyond that given to his co-defendants
6 would not be just punishment, nor would it promote respect for the law.
7

8 **C. THE NEED FOR THE SENTENCE TO AFFORD ADEQUATE DETERRENCE TO
CRIMINAL CONDUCT.**

9 We submit that a three year prison sentence will serve as an adequate deterrent.
10 It is unlikely that others will be inclined to engage in this type of conduct if they realize
11 that the consequences include a lengthy prison sentence.
12

13 **D. THE NEED TO PROTECT THE PUBLIC FROM FURTHER CRIMES BY MR. BAYDOVSKIY.**

14 The likelihood of recidivism by Mr. Baydovskiy is low. At age 31, this is his first
15 encounter with the criminal justice system. Based on the responsible way he has
16 responded to these charges, including his cooperation and early plea, acceptance of
17 responsibility and remorse, there is no reason to believe that he will ever again engage in
18 illegal conduct. Commenting on the importance and value of a defendant's cooperation,
19 the United States Supreme Court has observed that
20

21 "Few facts available to a sentencing judge are more relevant
22 to "the likelihood that [a defendant] will transgress no more,
23 the hope that he may respond to rehabilitative efforts to
assist with a lawful future career, [and] the degree to which
he does or does not deem himself at war with society."

24 *United States v. Roberts*, 445 U.S. 552, 558, 100 S.Ct. 1358, 63 L.Ed.2d 622 (1980).
25

26 **E. THE NEED TO PROVIDE THE DEFENDANT WITH REQUIRED MEDICAL CARE.**

27 There are no significant medical issues in this case.
28

1 **F. THE NEED TO AVOID UNWARRANTED SENTENCING DISPARITY.**

2 18 U.S.C. §3553(a)(6) directs the Court to consider the need to avoid unwarranted
3 sentence disparities "among defendants with similar records who have been found guilty
4 of similar conduct." Even prior to *Booker*, it had been held that a downward departure
5 from the sentencing guidelines was appropriate where the imposition of a standard range
6 sentence would create a substantial unjustified disparity: "Downward departure to equalize
7 sentencing disparity is a proper ground for departure under appropriate circumstances."
8 *United States v. Daas*, 198 F.3d 1167 (9th Cir. 1999), *cert. denied*, 531 U.S. 999 (2000),
9

10 The purpose of the Sentencing Commission was to establish
11 Guidelines that "avoid[] unwarranted sentencing disparities
12 among defendants with similar [criminal] records who have
13 been *found guilty* of similar criminal conduct. 28 U.S.C.
14 991(b)(1)(B). In drafting the Guidelines, the Commission
15 "sought reasonable uniformity in sentencing by narrowing
16 the wide disparity in sentences imposed for similar criminal
17 offenses committed by similar offenders." U.S.S.G. Ch. 1.,
18 Pt. A, Intro. ¶3, at 2.

19 *United States v. Banuelos-Rodriguez*, 215 F.3d 989 (9th Cir. 2000). *Accord*, *United States*
20 *v. Caperna*, 251 F.3d 827 (9th Cir. 2001).

21 In the present case, the Court has previously sentenced four defendants, all of
22 whom pled guilty to the identical fraud conspiracy. Sandra Thorpe, whose involvement
23 was minimal, received a probationary sentence. Camie Byron, David Sobol, and Alla
24 Sobol each received sentences of twenty-four (24) months. While it was argued by their
25 counsel that these individuals were less culpable than Mr. Baydovskiy (a point with which
26 we do not agree), one inescapable fact is that their sentencing guidelines scores were
27 identical, or nearly identical, to the guidelines score for Mr. Baydovskiy.

28 For Alla Sobol, the guideline calculation was exactly the same as for Mr.

1 Baydovskiy: 70-87 months (based on a Total Offense Level of 27, and a Criminal History
2 Category I). For David Sobol, the guideline calculation was one level lower than for Mr.
3 Baydovskiy: 63-78 months (based on a Total Offense Level of 26, and Criminal History
4 Category I). The Total Offense Level for Camie Byron was 23, but she was in Criminal
5 History Category II due to prior criminal convictions. Thus, her guideline sentencing
6 range was 51-63 months. However, while the guidelines calculations (which were based
7 on the same factors that apply to Mr. Baydovskiy, including loss amount, number of
8 victims, and role in the offense) were virtually the same, the guideline sentencing ranges
9 for Alla Sobol, David Sobol, and Camie Byron were each capped at 60 months, due to the
10 statutory maximum penalty.
11
12

13 Mr. Baydovskiy also pled guilty to a tax count, which increases his statutory
14 maximum exposure from five years to eight years.⁴ But any suggestion that his plea to
15 a tax count somehow makes him more culpable than Alla Sobol, David Sobol, or Camie
16 Byron in the fraud scheme should be summarily rejected, because every defendant in this
17 case was guilty of failing to report some portion of the income they derived from the
18 fraud. If this assertion is not true, we implore the government to refute it, but we remain
19 confident that no such challenge can be made. Indeed, the unreported income derived by
20 Alla and David Sobol far exceeded the unreported income by Mr. Baydovskiy. Moreover,
21 unlike Alla and David Sobol, who concealed their ill-gotten gains by diverting money from
22 escrow closings to pay for their personal expenses and other expensive items, Mr.
23 Baydovskiy did not try to hide his income.
24
25

26
27 ⁴ We believe that it has long been the unwritten policy of the United States Attorneys
28 Office in this district that if the IRS is involved in a criminal investigation, and the facts support
it, a tax count is to be included in the plea agreement of at least one defendant in every such case.

1 The fact is that Count 2 was made part of the plea agreement so that the
2 government would have some room to argue that Mr. Baydovskiy was more culpable than
3 the defendants who pled only to the fraud count. This was done because at the time Mr.
4 Baydovskiy entered his plea, the government did not know if it would be recommending
5 up to the sixty months statutory maximum for Alla, David, or Camie. If it did, or if the
6 Court sentenced any of those defendants to 60 months, the government wanted to be able
7 to argue for a more severe sentence for Mr. Baydovskiy. But the potential for a more
8 severe sentence was limited by the plea agreement in that instance to a sentence that would
9 be at most sixty percent more severe (60 months vs. 96 months). Now that Alla, David
10 and Camie have been sentenced to 24 months, a sentence recognizing that--in the
11 government's view--Mr. Baydovskiy was up to sixty (60%) percent more culpable would
12 result in a sentence of 38 months.
13

14
15 It was easy for Ms. Byron, Ms. Sobol, and Mr. Sobol to shift the blame to Mr.
16 Baydovskiy at their sentencing hearings, because he wasn't here to defend himself. As a
17 result, the Court heard only half the story at those hearings. The fact is that Alla Sobol
18 was every bit, if not more, culpable than Mr. Baydovskiy in the fraud. Indeed, the
19 government has previously represented to counsel that it viewed Alla, Victor, and Vlad
20 as co-equals. In its Sentencing Memorandum re Alla Sobol, the government describes her
21 involvement as:
22

23 Defendant Alla Sobol's role in the charged scheme included
24 operating Nationwide under her mortgage brokers license
25 and participating in efforts to form and operate Emerald City
26 Escrow under the managerial supervision of her husband and
27 co-defendant David Sobol. In addition, her participation
28 included preparing and submitting false documentation for
purchase money loans used to acquire properties in her own
name. . .

1 [Alla] was a director, officer, and managing member of
2 Nationwide. [Alla] was also a registered mortgage broker in
3 the State of Washington. Beginning in early 2007, [Alla]
4 and her con-conspirators began using the Nationwide entity
5 to conduct the mortgage brokerage business operations.

6 Government's Sentencing Memorandum re Alla Sobol at 2-3.

7 As noted above, Ms. Sobol's involvement was not just limited to Nationwide. As
8 the government also observed in its Sentencing Memorandum for Ms. Sobol, Alla
9 recruited her husband to manage the day to day operations of Emerald City Escrow:

10 As an experienced professional in mortgage lending business,
11 Ms. Sobol was well aware of the benefit of having a captive
12 escrow company to facilitate the scheme. She participated
13 in discussions with Vladislav Baydovskiy that led to the
14 decision to have her husband and co-defendant, David Sobol,
15 assume the managerial duties for Emerald City Escrow. It
16 is very unlikely that he would have undertaken those duties
17 without her direction.

18 Government's Sentencing Memorandum re Alla Sobol at p. 14.

19 Although the government ultimately tempered its sentencing recommendation for
20 Ms. Sobol by noting that her participation was distinguishable from Mr. Baydovskiy and
21 Mr. Kobzar, it nevertheless described her participation in the fraud scheme as:

22 Ms. Sobol was one of the three principals of Nationwide;
23 she and her fellow principals, co-defendants Baydovskiy and
24 Kobzar, were the experienced leaders of the scheme.

25 Id, at 19. Significantly, Ms. Sobol received a four level upward adjustment under the
26 sentencing guidelines for her leadership role in the conspiracy.

27 One of the principal arguments made by Ms. Sobol's counsel at sentencing was that
28 her involvement in the fraud scheme was limited to her participation at Nationwide. The
government also cited this as one of its reasons to distinguish her involvement from that
of Mr. Baydovskiy, because Mr. Baydovskiy was allegedly also involved in fraud at

1 Kobay Financial. What this argument completely overlooked was that prior to joining
2 Nationwide, Alla Sobol was an account representative committing mortgage fraud at
3 Central Bank (where Mr. Baydovskiy first met her), and then at Countrywide. During that
4 time she was involved in "fixing" credit reports by cutting and pasting, preparing
5 fraudulent W-2s, and even paying off underwriters to overlook problems. She would tell
6 Mr. Baydovskiy and other loan originators to submit loan packages to her even if they
7 didn't meet her company's guidelines, and she would find a way to fund them by
8 manipulating the documents.
9

10
11 Indeed, Alla Sobol brought fraud techniques to Nationwide that Mr. Baydovskiy
12 had never heard of, including the use of double and triple HUD forms, and also the
13 "virtual downpayment." These were techniques that she learned and used before she
14 joined Nationwide, which she then shared with her co-defendants.

15 Ms. Sobol also sought leniency on the basis that she had "seen the light" and
16 voluntarily closed Nationwide, over Vlad's objections, before she became aware of the
17 pending investigation. This is significant for two reasons. First, it shows that she
18 controlled Nationwide. How else could she close it over Vlad's objection? Second, the
19 reasons she gave for closing Nationwide are not true. Alla Sobol closed Nationwide
20 because there was no more profit to be made from Nationwide because the lenders had all
21 stopped doing business with them, and all of the loan officers had left. At the time she
22 closed Nationwide, Alla had already obtained a job with Key Bank. Alla was also aware
23 that William Anderson and others had recently been indicted in this district (CR08-
24 212RAJ) for similar conduct, and she was concerned that she, too, might be in the
25 government's radar.
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When viewed through the prism of the true facts, the basis for suggesting that Alla Sobol was less involved in the fraud scheme than Mr. Baydovskiy evaporates into thin air.

VII. RESPONSE TO PROBATION RECOMMENDATION.

The Probation Office has submitted a sentencing recommendation of 48 months on Count 1, and 22 months on Count 2, to be served consecutively. This recommendation is insupportable under the Sentencing Guidelines (see U.S.S.G. §5G1.2); under 18 U.S.C. §3553(a); under the facts and circumstances of the case; and as a matter of basic fairness.

1. Count One.

We submit that while the recommendation of 48 months is higher than necessary in order to achieve the goals of sentencing (for all of the reasons hereinabove set forth), it at least appears to take into account the sentences imposed on Alla Sobol, David Sobol, and Camie Byron on the same count, and the need to avoid unwarranted sentencing disparity among defendants "with similar records who have been found guilty of similar conduct." Indeed, recognizing the need to avoid unwarranted disparity, the recommended sentence of 48 months is less than the statutory maximum on that count (60 months).⁵

⁵ U.S.S.G. §5G1.2, Application Note 1, provides, in relevant part, as follows:

Usually, at least one of the counts will have a statutory maximum adequate to permit imposition of the total punishment as the sentence on that count. The sentence of each of the other counts will then be set at the lesser of the total punishment and the applicable statutory maximum, and be made to run concurrently with all or part of the longest sentence. If no count carries an adequate statutory maximum, consecutive sentences are to be imposed to the extent necessary to achieve the total punishment.

Here, because Probation recognizes that the appropriate punishment for the fraud is less than the statutory maximum penalty, whatever sentence the Court imposes on Count 2 should run concurrently, not consecutively.

1 2. Count Two.

2 The sentencing guidelines on Count 2 (Willfully Making and Subscribing a False
3 Income Tax Return) include a base offense level of 10 pursuant to U.S.S.G. §2T1.1(a)((1)
4 and §2T4.1, and a two level upward adjustment pursuant to U.S.S.G. §2T1.1(b)(1),
5 resulting in an Adjusted Offense Level of 12. See PSR, ¶¶ 50-55. With a two level
6 decrease for Acceptance of Responsibility pursuant to U.S.S.G. §3E1.1(a), the Total
7 Offense Level on Count 2 (subject to grouping) is 10.⁶ The sentencing guideline range,
8 based on a Total Offense Level of 10, is 6-12 months. Most offenders in this district
9 convicted of similar offenses, with similar criminal history, receive sentences of probation,
10 community confinement or home detention, or some combination thereof. There is simply
11 no justification for a sentence recommendation of 22 months imprisonment (nearly twice
12 the high end of the guidelines) for this offense, for this defendant, which would without
13 question be wildly disparate from the sentences imposed on the vast majority of similarly
14 situated offenders in this district. Moreover, such "piling on" for this defendant, in light
15 of the fact that it is undisputed that every defendant in this case was guilty of the same
16 conduct (regardless of whether they were charged), is totally unjustified.

17
18 Probation's sentencing recommendation is a transparent attempt to circumvent what
19 would obviously be unwarranted sentencing disparity on the fraud count (based on the
20 sentences of the co-defendants) by recommending an unjustifiably high sentence on the tax
21 count. The Court should not countenance such an obvious contrivance.
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27 ⁶ Pursuant to the guidelines dealing with multiple counts, the guidelines for Count 2 do not
28 increase the applicable offense level on Count 1 at all. See U.S.S.G. §3D1.4(c).

VIII. CONCLUSION.

Vladislav Baydovski is a good person who made some very bad choices. His decision to become involved in mortgage fraud has been a life changing event, the consequences of which he will continue to suffer for many more years.

Upon arriving in this country, Vlad worked hard to overcome his almost pathological shyness and devised his own rigorous self-improvement regimen. He threw himself into learning to live and work in his new country and became an American citizen in 1997. Over the past 17 years, he has been earnest, diligent and enterprising. His years of hard work resulted in some success as a loan originator. Unfortunately, he became caught up in the "high-risk" lending practices that swept the loan industry during the past decade. Had he not stepped over the line into this unlawful activity, he would still be home with his wife and children. He has otherwise been a good citizen in every sense of the word.

Mr. Baydovski fully accepts the fact that his offense conduct was serious and that he must serve a term of imprisonment. It does appear that based on his incredibly difficult childhood, the courage he showed in building a life for himself and his parents here in America, his sincere remorse at having broken the law, the fact that his criminal conduct did not occur in a "vacuum" but was the result of his taking part in the high-risk and fraudulent loan practices that were invented and popularized by the banks and investment banks, and his great love for his two sons, wife, parents and grandparents, that the sentence should be leavened with a modicum of mercy.

There are now four generations of Baydovskiys living in the greater Seattle area, ranging from Vlad's sons to his grandfathers. Each of the generations depend on Vlad.

1 His father is aging and is currently out of work. His mother recently endured a
2 reoccurrence of her breast cancer which required aggressive chemotherapy. She, too, is
3 out of work and her prognosis is uncertain. Mr. Baydovskiy's grandfathers are obviously
4 far beyond working age, and his two young boys are totally dependent on their elders.
5 Vladislav and his wife are the only able-bodied adults capable of working, and the family's
6 physical and emotional welfare largely depends on them. Based on his sincerity,
7 intelligence, and lack of any other prior criminality, Vlad is highly unlikely to disappoint
8 either this Court or the numerous individuals who depend on him for their survival.
9

10 For all of these reasons, we respectfully submit that under all of the facts and
11 circumstances of this case, a sentence of thirty-six (36) months on Count 1 and six (6)
12 months on Count 2, to be served concurrent with Count 1, is a sufficient, but not greater
13 than necessary, sentence.
14

15 We also ask the Court to recommend placement at FPC Sheridan or FPC Lompoc.
16 These are the camp facilities (for which we believe that he is eligible) that would be the
17 most accessible to his family.
18

19 DATED this 4th day of December, 2009.

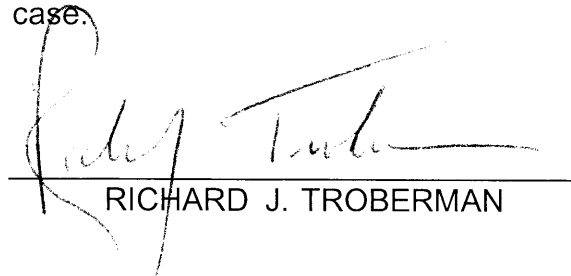
20 RICHARD J. TROBERMAN, P.S.

21
22 By: 

23 RICHARD J. TROBERMAN
24 WSBA #6379
25 Attorney for Defendant
26 Vladislav Baydovskiy
27
28

CERTIFICATE OF SERVICE

I hereby certify that on December 15th, 2009, I electronically filed the foregoing "Defendant Vladislav Baydovskiy's Sentencing Memorandum" with the Clerk of Court, using the CM/ECF system which will send notification of such filing to the attorneys of record in this case.



RICHARD J. TROBERMAN